**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN**
**BENCH AT JAIPUR.**
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**J U D G M E N T**

Suwa Lal vs. Mathura Lal & Others

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S.B.Civil First Appeal No.116/1988
under Section 96 C.P.C. against the
judgment and decree dated 26.02.1988
passed by Shri Hari Singh Punia RHJS,
Additional District Judge Dausa,
District Jaipur in Civil Suit No.4/79
dismissing the suit of the appellant.

Date of Judgment :::::: August 21, 2006

**PRESENT**

**HON'BLE MR.JUSTICE KHEM CHAND SHARMA**

Mr.Ajeet Bhandari for appellant.
Mr.O.P.Mishra for respondents.

**BY THE COURT (ORAL):-**

The facts giving rise to this appeal in brief are that the plaintiff appellant filed a suit for declaration and injunction against respondents and Nanagram son of Gauri Shanker, who expired during pendency of the suit. In

the plaint, the plaintiff pleaded that there is a temple of Chouth Bindayakji situated in village Manpur and the temple has certain properties as described in para Nos.1 and 3 of the plaint. The plaintiff and the defendants are the Pujaries of the temple. According to the plaint the right to do Sewa Pooja and to receive the offerings and other income of the temple had been divided in between the parties according to which in every four years for a period of 13 months, the Osra (turn) was of the plaintiff Suwa Lal and thereafter for 11 months the Osra (turn) was of Kalyan Sahai. Thereafter for 13 months the Osra (turn) was of Nanagram and after that for 11 months the Osra (turn) was again of Kalyan Sahai. It was mentioned in the plaint that the defendant Mathura Lal, brother of the plaintiff was in government service from 20-25 years and, therefore, the plaintiff was taking use of his Osra (turn) and spending the income on his family. As per the case of the plaintiff when the Osra (turn) for the Samvat 2031 came then defendant Mathura Lal claimed his separate Osra from the plaintiff. Then an oral agreement was entered into between the parties and it was agreed that the Ist Osra of 13 months will be of the plaintiff and in the next four years, the Osra of 13 months will be of Mathura Lal and this arrangement shall continue. It was mentioned that the Osra of Samvat 2031 was kept by defendant Mathura Lal and he

collected the offerings, rent and other income of the temple for 13 months. When the Osra for the Samvat 2035 came then the plaintiff started collecting rent from the tenants and got the rent notes executed from them and also started Sewa Pooja in the temple but defendant Mathura Lal in collusion with Kalyan and the tenants issued notices to the plaintiff and on 16.3.1979 the defendant Mathura Lal started quarreling with the plaintiff and forcibly with the help of one Govind tried to do Sewa Pooja. In such circumstances, the plaintiff filed the suit for declaration and for permanent injunction against the defendants.

2. In the written statement, the defendant respondents Mathura Lal and Kalyan though have admitted the facts regarding the temple and its properties but have disputed the income from the offerings, rent and land revenue (Lagan). It was mentioned that the land revenue was being collected by the Revenue Department, Government of Rajasthan. It was mentioned that the father of plaintiff and defendant No.1 died in the Samvat year 2021 and the plaintiff took benefit of the Osra of his father for the samvat years 2023 and 2027 and did not pay any benefit to the defendant. Upon this a dispute was raised and the plaintiff agreed to handover two Osras (turns) for the samvat years 2031 and 2035 to defendant No.1 and no dispute arose during these Osras. The defendant further

submitted that orally it was settled between the parties that the plaintiff alone will use the Osras for the samvat year 2023 and 2027 and the defendant No.1 will use the Osras for the samvat year 2031 and 2035 respectively. Thus, it was submitted that the contention of the plaintiff that he was entitled to have the Osra for the samvat year 2035 is false. By way of additional pleas it was mentioned that as the plaintiff had used two Osras, therefore, the defendant No.1 was also entitled to use two Osras and, therefore for the Osra for samvat year 2035 the defendant No.1 was entitled. It was also mentioned that on 21.11.1980 the parties have compromised the matter, therefore, the plaintiff was not entitle to maintain the suit.

3. On the basis of the pleadings of the parties, the learned trial court framed as many as six issues.

4. To prove his case the plaintiff himself appeared as a witness and also exhibited five document. From the side of the defendants two witnesses were examined and the agreement Ex.1 was exhibited.

5. Learned trial court and after recording evidence of the parties and hearing both the sides, vide impugned judgment and decree dated 26th February, 1988 dismissed the suit of the plaintiff holding that the plaintiff has not been able to prove his case.

6. Learned counsel for the appellant has contended that

the learned trial court has neither properly appreciated nor critically examined the evidence of the plaintiff while deciding the issues and, therefore, the impugned judgment and decree deserves to be reversed and the suit of the plaintiff is liable to be decreed.

7. On the other hand, learned counsel appearing for the defendant respondents while supporting the impugned judgment has contended that the learned trial court has passed the impugned judgment after taking into consideration the evidence adduced by the parties and also the material available on record. Therefore, no interference is required to be called for and the appeal is liable to be dismissed.

8. After hearing learned counsel for the appellant, I have gone through the material and evidence available on record as well as the impugned judgment.

9. Sofar as issues No. 1 and 2 are concerned, the burden to prove the same was upon the plaintiff appellant. The undisputed position is that the plaintiff and the defendants are the partners of Sewa Pooja of the temple situated in Manpur town. The turn (Osra)for doing Sewa Pooja in the temple of the plaintiff and defendant No.1 comes once in four years for 13 months. After the death of father of defendant No.1 dispute regarding turn (Osra) had arisen between them. As per the case of the plaintiff, in

Samvat year 2031 a compromise took place in between him and defendant No.1, according to which the turn for the samvat year 2031 was of defendant No.1 while the turn of the plaintiff was for the samvat year 2035 but when his turn came, defendant No.1 and 2 created hurdle. In this regard, plaintiff Suwa Lal in his statement has stated that his father died in Samvat 2021 and after the death of his father the turn for the Samvat year 2023 came in his share and after four years i.e. in the samvat year 2027-28 the turn of Mathura Lal came. He has stated further that Mathura Lal was serving out of the town, therefore, he performed the Sewa Pooja during the turn of Mathura Lal and paid the income to Mathura Lal. When the turn for the year 2031 came, Mathura Lal raised dispute saying that as he (plaintiff) used the turn for the year 2027 and kept the income, therefore, he (Mathura Lal) is entitled to have this turn. The witness deposed that when the turn for the year 2035 came again Mathura Lal raised dispute with him and also with the tenants saying that this was also his turn. In his cross examination this witness has admitted that he did not keep the accounts regarding income from the temple and its properties and regarding the amount spent on the family of Mathura Lal. He has denied the suggestion that he utilised both the turn for the years 2023 and 2027 and in place of which he agreed to give the turns for the

years of 2031 and 2035 to Mathura Lal. He has also admitted that he has utilised the turn for the samvat year 2039. As against this, the defendant Mathura Lal and his witnesses have deposed that as Suwa Lal utilised the turns for the samvat years 2023 and 2027 and did not pay any share from the income, therefore, was entitled to utilise the turns for the samvat years 2031 and 2035.

10. From the evidence of the parties it emerges that the dispute is only for two turns i.e. for the samvat years 2031 and 2035 and thereafter there appears to be no dispute between the parties as the plaintiff himself admitted that he has utilised the turn for the samvat year 2039. It is also an undisputed fact that as per the agreement between the parties the plaintiff and the defendant Mathura Lal were entitled for their turn after four years by rotation. The plaintiff has also not disputed this fact that he utilised the turns for the years 2023 and 2027 and has not been able to prove that he paid the income to the defendant for his turn. In such circumstances, as per the agreement, the defendant Mathura Lal was entitled for two turns i.e. for the turn of Samvat year 2031 and 2035 and has rightly raised dispute. In this view of the matter, I am of the opinion that the finding recorded by the learned trial court on issue Nos.1 and 2 are just and proper being based

on proper appreciation of the evidence of the parties which require no interference.

11. Issue No.3 is to the effect as to whether on 21.11.1980 a compromise took place in between the plaintiff and defendant Mathura Lal and because of this, the suit was not maintainable. The defendant Mathura Lal and his witnesses have proved this fact that a compromise took place between the plaintiff Suwa Lal and defendant Mathura Lal regarding their turn in the presence of five persons and plaintiff Suwa Lal put his signatures on the same. Plaintiff Suwa Lal in his cross examination has accepted this agreement but his case is that it was not in relation to the turn for the year 2035. Thus, it is clear that the defendant has been able to prove document Ex.A.1 agreement. On the basis of the writing in the document, the learned trial court has observed that in view of the writing in para No.8 of the agreement, it was incumbent upon the parties to withdraw the civil and criminal cases pending in various courts. Therefore, in view of this compromise the plaintiff was duty bound to withdraw the suit but he has not done so. In view of this, I find that the learned trial court has committed no error in deciding issue No.3.

12. For the discussions above, the first appeal fails and is hereby dismissed with no orders as to cost.

**(K.C.Sharma),J.**

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